IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

LA.App..No. 418 of 2006(D)

LAR.116/2002 of SUB COURT, CHERTHALA
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APPELLANT: 2ND RESPONDENT:

THE MANAGING DIRECTOR,
K.S.I.D.C., TRIVANDRUM.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS: CLAIMANTS & 1ST RESPONDENT:
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1. **ANNAKUTTY, KATTAKKAYATH,**
   ARAKKULAM VILLAGE.

2. **K.P. PRINCE, KOTTINATTU,**
   PALLIPPURAM, CHERTHALA TALUK.

3. **KERALA STATE, REP. BY THE**
   SPECIAL TAHSILDR (LA), INDUSTRIAL GROWTH CENTRE,
   CHERTHALA.

BY ADV. SRI.P.SANTHALINGAM
SRI.S.SHARAN

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 27/07/2007, ALONG WITH LAA NO. 419 OF 2006 AND CONNECTED CASES THE COURT ON 10/08/2007 DELIVERED THE FOLLOWING:

Kurian Joseph & T.R. Ramachandran Nair, JJ.

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L.A.A..NOs.418, 419, 470, 472 & 474 of 2006

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Dated this the 10th day of August, 2007

JUDGMENT

T.R. Ramachandran Nair, J.

All these appeals have been filed by the second respondent in the Land Acquisition References which were disposed of by the court below by a common judgment. The appellant is the requisitioning authority for whose purpose the land was acquired, viz. for the purpose of establishing Industrial Growth Centre at Pallippuram. The notification under Section 4 (1) is dated 24.1.1997, possession of the land was taken on 15.9.2000 and award was passed on 16.9.2000. The Land Acquisition Officer passed the award fixing land value at the rate of Rs.14,586/- per are. As per the impugned judgment, the court below has enhanced the land value and fixed it at the rate of Rs.29,982/- per are.

2. The main grounds urged by the appellant in the appeal are that the court below was not right in rejecting Ext.R5, the basic document. It is also urged that the document Ext.A2 relied upon to fix the enhanced market value, is a post notification document and hence the same does not reflect a correct market value.

3. Earlier, the court below had disposed of the cases as per judgment dated 19.4.2004 by a common judgment. In L.A.A. No.725/2004 this court was pleased to set aside the judgment and remanded the matter for fresh disposal after giving opportunity to both parties to adduce further evidence. All these cases were tried jointly and L.A.R.No.116/2002 has been treated as the leading case. Exts.A1 to A7 have been marked on the side of the claimant in L.A.R.No.116/2002 and Ext.R1 has been marked on the side of the respondents, before the remand. After remand, Rws.1 and 2 have been examined and Exts.R2 to R7 were marked on the side of the respondents. Exts.A8 was marked on the side of the claimants in L.A.R. No.116/2002 apart from Ext.X2. AW.1 was examined in L.A.R. No.116/2002 before remand.

4. The court below has rejected Ext.R5 mainly for the following reasons: The sketch Ext.R6 shows that the basic land is situated on the northern side of Ottapunna – Thavanakkadavu road whereas the properties acquired are situated by the side of Cherthala – Arookutty road. The report Ext.X2 shows that property is lying at a distance of 2 kms. from the acquired properties on the southern side. The distance to the basic land from Ottapunna junction is 300 metres and apart from that, there is a pond and a narrow thodu in the said property. The report of the Commissioner,

Ext.X2 shows that Cherthala – Arookutty road by the side of which the acquired properties are situated, is more important than the Thavanakkadavu road. As regards the nature of the land, there is a pond and a narrow thodu in Ext.R5 property, whereas the acquired property is dry land. Therefore, apparently the land acquired is more valuable than the basic land. It is in these circumstances that the court below has rejected the document, Ext.R5. In fact, the evidence of RW.2 also shows that the basic land is lying at a lower level of about 1 ½ metres than the road. On an over all assessment of the evidence adduced, the court below found that the market value fixed based on Ext.R5 document is not just and proper and we see no reason to upset the above finding.

5. Exts.A1 to A8 have been marked on the side of the claimants to claim enhanced market value. Out of these documents, Exts.A1 and A6 are pre-notification documents and Exts.A2, A3 and A8 are post-notification documents. Exts.A4 and A5 are judgments in L.A.R.Nos.15/2002 and 21/2002. Those were not discussed by the court below for the reason that they have been set aside by this court in the appeals.

6. While considering the evidence in detail, Ext.A1 was not accepted by the court below for the reason that the land involved therein is much less in extent (4 cents) compared to the acquired property and that there are

circumstances to assume that the said land which was wet land having no road access, have been sold for a fancy price, thus showing that the document is not one reflecting a genuine transaction. As far as Ext.A6 is concerned, even though it is a pre-notification document, the consideration therein reflects the price paid for the actual extent of 11 cents and also virivu and its extent and value is not shown in the document. Therefore, the same was rejected. Ext.A7 which is a post-notification document dated 29.10.1998, was not accepted as it was long after the notification under Section 4(1). The court below was of the view that the land value therein does not represent the prevailing market value as on the date of the notification. Ext.A3 was also not accepted for the reason that it was executed about one year after the date of Section 4(1) notification and the property therein is not similarly situated as that of the acquired property. It was purchased by a hospital and they have purchased it for the purpose of constructing quarters attached to the hospital.

7. Ext.A2 is the document which was accepted by the court below. It was dated 24.4.1997. The comparative assessment of the land value as well as the advantages and disadvantages of the property with that of the acquired property showed that the property is more or less similar to the acquired property. The report Ext.X1 reveals that the property covered by

Ext.A2 is situated on the western side of Cherthala – Arookutty road which is the same road on the side of which the acquired property is situated. It is lying only at a distance of 600 metres north of the property involved in L.A.R. No.116/2002. The extent involved is 13 cents of levelled land. The report of the Commissioner also shows that it is having equal importance as that of the acquired property. There are so many commercial institutions and public institutions near Ext.A2 property. It is lying very close to Pallichanda. In view of the above circumstances, the court below found that it is lying in a more important locality compared to the acquired property. The document was executed only four months after the date of Section 4(1) notification. There was no evidence to show that the land value in the locality has increased considerably after the notification in question. The court below considered the legal principles stated by this court in 1997 (2) KLT 872, 1999 (2) KLJ 594 as well as that of the decision of the Supreme Court in AIR 2004 4830 to find that the land value covered by Ext.A2 can be accepted for fixing the enhanced market value. The court below found that there is no evidence to the effect that there was a sharp increase in land value pursuant to the acquisition proceedings.

8. On going through the evidence in this case, we find that even though Ext.A2 is a post-notification document, it is only executed four

months after the date of the notification under Section 4(1). The advantages and potentialities of the acquired properties and that of the properties involved in the above document are more or less the same. Properties are similarly situated and comparable. There is no evidence to show that there was a sharp increase in the land value pursuant to Section 4(1) notification. There is no rule that a post notification document should not be accepted at all in fixing the land value. A learned single judge of this court in the decision reported in **Kerala State Industrial Development Corporation v. Naniamma Lakshmikutty Amma** (2007 (3) KLT 194) has considered the question on an elaborate survey of various decisions of the Supreme Court and has held as follows:

> "I am of the view that the fact of increase in price of land in the locality can be taken note of while fixing the land value in respect of the land acquired, if there is considerable lapse of time between the date of basis document and the date of Section 4(1) notification. When it is proved that there was a steady increase in the land value, the same yardstick must be applied while considering a pre-notification basis document relied on by the land acquisition officer and a post notification document relied on by the claimant-land owner. The same reasoning in not accepting a post-notification document on the ground that there was rise in price after notification must also apply to the rejection of a basis document where it is shown that there was upward increase in the value of lands after the date of basis document and before the issue of Section 4(1) notification.

The said decision was also rendered in respect of the acquisition in

question.

9. The court below has fixed enhanced market value after reducing 40% of the market value than that is reflected in Ext.A2. We find that the market value arrived at is just and reasonable.

10. Even though the counsel for the appellants argued for the position that Ext.A2 ought to have been rejected, the evidence shows that the court below was justified in accepting the same. We are in full agreement with the value fixed by the court below. Therefore, following the dictum laid down in 1997 (2) KLT, 872 and 1999(2) KLJ 594, we find no merit in the contentions advanced by the counsel for the appellants.

Hence, the appeals are dismissed confirming the judgment and decree passed by the court below. No costs.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)

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